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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,846	08/07/2003	Emmanuel Davailon	D-7869	3338

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Law Department
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EXAMINER

DESAI, HEMANT

ART UNIT	PAPER NUMBER
3721	

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/637,846

Applicant(s)

DAVAILLON, EMMANUEL

Examiner

Hemant M Desai

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3 and 10-13 is/are rejected.
7) ☒ Claim(s) 4-9 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 07 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 11 and 13 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 11 describes a packaging machine and claim 13 describes a controller for controlling the operation, which are additionally connected to the grouping device of claim 1. Therefore it is not clear whether applicant intends to claim the controller, packaging device and grouping device as combination. If so, claims must be amend to reflect the changes.

“A device” (claims 2-10, line 1) should be “The device”.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by a German Patent (4439728).

German Patent ('728) discloses a device and method for grouping articles, comprises leading and trailing spacer elements (1, 1', fig. 1) arranged to move along a fist predetermined path (4, fig. 1), each of said spacer elements being adapted to engage at least one article (3, fig. 1) from the in feed system (17, fig. 1) and to convey

the articles through a working reach of the device, and adjustment means (control cams 2, not illustrated, see col. 5, lines 38-59) to adjust the device between a first mode in which said each spacer element follows the first predetermined path (4) to successively engage an article group and a second mode in which the trailing spacer element follows the first predetermined path and the leading spacer element becomes transferred from the first pre-determined path to follow a second predetermined path (16, fig. 1) connected to the first predetermined path before rejoining the first predetermined path whereby the leading and trailing spacer elements engage an article group simultaneously.

Regarding claim 2, the spacer element comprises a body portion (5, 5', fig. 1) and an engagement portion (1, 1', fig. 1), the body portion being slidably mounted in a transverse direction to a spacer element Conveyor (see fig. 1).

Regarding claim 3, the first predetermined path is provided by a first cam track (4, fig. 1), and a cam follower (2, fig. 5) projects from an underside of the body portion of the each spacer element (see fig. 5).

Regarding claim 10, the speed of the spacer element is alterable depending on the number of articles and/or the mode of operation (see col.3, lines 2-38).

Regarding claim 12, the German Patent ('728), as mentioned above, discloses all the claimed limitations of method of grouping articles.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent (4439728) in view of Wiernicki et al. (6571532).

The German Patent ('728), as mentioned above, discloses all the claimed limitations, except for a controller. However, Wiernicki et al. teach a controller (165, fig. 15) to control and perform the various functions of the packing device (see col. 20, lines 29-67; col. 21, lines 1-29). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided a controller as taught by Wiernicki et al. in the grouping device of the German Patent ('728) to control and perform the various functions of the grouping device.

Allowable Subject Matter

6. Claims 4-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hemant M. Desai

Hemant M Desai
Examiner
Art Unit 3721

HMD